

Exhibit 1 to Coquille Tribe's Notice of Removal

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF COOS

THE CITY OF NORTH BEND, an Oregon  
Municipal Corporation,

Plaintiff,

vs.

COQUILLE INDIAN TRIBE OF OREGON  
and COQUILLE ECONOMIC  
DEVELOPMENT CORPORATION,

Defendants.

Case No.: 09CV0783

SUMMONS

**TO: Melissa Cribbins Coquille Indian Tribe, 3050 Tremont Ave., North Bend, OR**

You are hereby required to appear and defend the complaint filed against you in the above-entitled action within 30 days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.


**NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff. If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

  
Mike Stebbins, OSB #75353

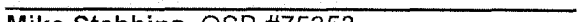
Stebbins & Coffey, Attorneys at Law  
745 California Street - P.O. Box 1006  
North Bend, OR 97459  
(541) 756-2066 - Trial Attorney for Plaintiff

STATE OF OREGON, County of  
Coos) ss. ) I, the undersigned  
attorney of record for the plaintiff, certify  
that the foregoing is an exact and  
complete copy of the original summons  
in the above-entitled action.

  
Mike Stebbins, OSB #75353  
Stebbins & Coffey, Attorneys at Law

**TO THE OFFICER OR PERSON SERVING THIS  
SUMMONS:**

You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service and attach hereto.

  
Mike Stebbins, OSB #75353  
Stebbins & Coffey, Attorneys at Law

Certified true copy:

By



RECEIVED

SEP 22 2009

COOS COUNTY COURTS

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF COOS

THE CITY OF NORTH BEND, an Oregon  
Municipal Corporation,

Plaintiff,

vs.

COQUILLE INDIAN TRIBE OF OREGON  
and COQUILLE ECONOMIC  
DEVELOPMENT CORPORATION,

Defendants.

Case No.: 09CV0783

COMPLAINT – SPECIFIC  
PERFORMANCE OF A CONTRACT

(Not subject to mandatory Arbitration)

1.

Plaintiff, City of North Bend (hereinafter "City") is an Oregon Municipal Corporation.

2.

The Coquille Indian Tribe of Oregon (hereinafter "Tribe") is a federally recognized tribe of Indians organized pursuant to the Constitution and By-laws adopted by the Tribe's membership.

3.

The Coquille Economic Development Corporation (hereinafter "CEDCO") is a tribally chartered corporation which is wholly owned by the Tribe. CEDCO is also a registered corporation authorized to do business and doing business in the State of Oregon as "The Mill".

COMPLAINT – Specific Performance of a Contract - 1

1  
2 4.

3 On October 25, 1994, Plaintiff and the Defendants entered into a written  
4 Agreement for Municipal Services ( hereinafter "Agreement") under the terms of which  
5 the City agreed to provide certain municipal services to the Defendants' facility known  
6 as The Mill, along with other consideration, in exchange for certain periodic payments  
7 from the Defendants. A copy of the Agreement is attached to this Complaint as Exhibit  
8 "1" and by this reference its provisions are incorporated herein.  
9

10 5.

11 Immediately following the execution of the Agreement, the City began providing  
12 services to the Defendants. The Defendants began making periodic payments to the  
13 City for those services under the terms of the Agreement. The provision of services by  
14 the City continues, but Defendants have failed to pay amounts due under Paragraph (5)  
15 (a) of the Agreement for fire protection, law enforcement, community and tourist  
16 promotion, and other municipal services. Defendants now owe the Plaintiff pursuant to  
17 Paragraph (5) (a) of the Agreement the approximate sum of \$115,000.00 for the first  
18 quarter payment due pursuant to Paragraph (5) (a) of the Agreement. This payment  
19 was to be paid by Defendants to Plaintiff on July 1, 2009.  
20

21 6.

22 Defendants have advised the Plaintiff of their intent not to honor the terms of  
23 Paragraph (5) (d) of the Agreement in the future. On October 15, 2009, an additional  
24 \$44,750.00 will be due Plaintiff from Defendants, representing the first quarterly  
25 installment for the Room Charges described in Paragraph (5) (d) of the Agreement.  
26 Time is of the essence in Exhibit "1".

1  
2 7.

3 Paragraph 5 (a) of the Agreement provides that the value of land, improvements  
4 and personal property shall be not less than the full insurable value of such property.  
5 Defendant has failed to provide to Plaintiff any information on the insurable value of its  
6 land, improvements and personal property for the 2009-2010 fiscal year. Defendant  
7 should be required to perform the terms of the Agreement and provide the full insurable  
8 value of its land, improvements and personal property to Plaintiff so the payments due  
9 pursuant to Paragraph 5 (a) of the Agreement can be calculated by Plaintiff. In the  
10 alternative, the Defendant should be required to appoint an appraiser as provided by  
11 Paragraph 5 (a) of the Agreement so the alternate method of establishing the value of  
12 the land, improvement and personal property can be determined.

13 8.

14 Plaintiff, City, has provided written notice of default under the Agreement to the  
15 Defendants.

16 9.

17 Plaintiff, City, is ready, able, and willing to continue to carryout its obligations  
18 under the Agreement.

19 10.

20 The Agreement provides that if an action is instituted to enforce any of its  
21 contractual provisions, the prevailing party shall be entitled to an award of costs and  
22 reasonable attorney's fees.

23  
24 ////

25 ////

26 ////

**COMPLAINT – Specific Performance of a Contract - 3**

11.

Plaintiff, City, has no adequate remedy at law.

**WHEREFORE, Plaintiff prays for judgment against the Defendants:**

1. Requiring Defendants to pay the outstanding balance due Plaintiff under the terms of Paragraph 5 (a) of the Agreement, in the amount of \$115,000.00 within thirty (30) days of the date of the Judgment or within such other time as the Court may fix for payment;

2. Requiring Defendants to pay to Plaintiff the amounts which will become due under the terms of Paragraph 5 (d) of the Agreement, in the amount of \$44,750.00 within thirty (30) days of October 15, 2009;

3. Requiring Defendants to provide to Plaintiff a copy of those documents evidencing the full insurable value of Defendant's land, improvements and personal property as provided by Paragraph 5 (a) of the Agreement, or, in the alternative, appointing an appraiser for Defendant pursuant to Paragraph 5 (a) of the Agreement so the three party appraisal set forth in Paragraph 5 (a) of the Agreement can be done to determine the appraised value of Defendant's land, improvements and personal property;

4. Requiring Defendants to continue paying those amounts required in Paragraph 5 of the Agreement, so long as they continue to receive City services;

5. If Defendants fail to pay the balances due Plaintiff under the terms of the Agreement, or if Defendants fail to make payments in the future under the terms of Agreement after appropriate notice of default, authorizing Plaintiff to stop providing the municipal services described in paragraph 4 of the Agreement permanently or until such time as Defendants' payments are current;

**COMPLAINT – Specific Performance of a Contract - 4**

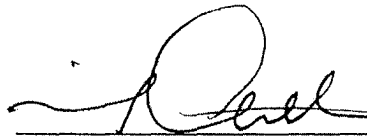
1           6.     For Plaintiff's costs and attorney's fees; and

2           7.     Granting Plaintiff such other relief as the Court deems equitable.

3  
4           Dated this 22 day of September, 2009.

5  
6                               Respectfully submitted,

7  
8                               STEBBINS & COFFEY

9  
10                              

11                              MIKE STEBBINS

12                              OSB No. 75353 - Trial Attorney

13                              Stebbins and Coffey

14                              745 California - P. O. Box 1006

15                              North Bend OR 97459

16                              Phone: (541) 756-2066 - Fax: (541) 756-2060

17                              Email: stebbins@stebbinsandcoffey.com

AGREEMENT FOR MUNICIPAL SERVICES

This agreement, dated in 1994 is made by and between the CITY OF NORTH BEND, herein called City, the COQUILLE INDIAN TRIBE OF OREGON, herein called Tribe, and the COQUILLE ECONOMIC DEVELOPMENT CORPORATION, herein called CEDCO, for the purpose of providing certain municipal services on the following terms and conditions:

(1) STATUS OF THE PARTIES:

The City of North Bend is an incorporated city of the State of Oregon operating under a city charter with a general grant of powers and subject to constitutional and statutory provisions of the State of Oregon.

The Coquille Indian Tribe is a federally recognized tribe of Indians that was recognized by the Coquille Indian Tribe of Oregon Restoration Act of June 28, 1989, Public Law 101-42, 25USC Section 715, et seq., and is organized pursuant to constitution and bylaws which were adopted by the Tribe's membership on August 27, 1991.

CEDCO is a tribally chartered corporation which is wholly owned by the Tribe and is the Tribe's authorized agent for the performance of the terms and conditions of this agreement.

(2) PURPOSE OF AGREEMENT: The Tribe and CEDCO intend to construct, operate and maintain a facility on said property to be called "The Mill" which is expected to attract large numbers of people and generate a need for public and utility services available in the City of North Bend. The parties recognize that the Tribe and CEDCO are not subject to the levy of taxes and other charges for municipal services and that this contract is requested by the City to provide and compensate for such services.

(3) WAIVER OF SOVEREIGNTY AND OTHER IMMUNITIES: Under various laws of the United States and State of Oregon the parties may have sovereign or other immunities which would prevent or impair the enforcement of the terms of this agreement. Without making any general waiver, limitation or modification of sovereign and other immunities, the parties to this agreement waive any sovereign or other immunity from legal proceedings for the enforcement of the terms of this agreement and consent to be sued in the courts of the State of Oregon and/or the United States District Court for the District of Oregon. The parties to this agreement expressly consent to the service of process for actions entirely within the scope of this limited waiver; and this waiver is expressly limited to permit judgments or awards only to the extent necessary to provide remedies for the breach of this agreement, including the enforcement of a decision of binding arbitration.

(4) MUNICIPAL SERVICES: The City provides various tangible and intangible municipal services and also makes available to persons and



properties within the City the various utility and other services provided by other agencies. The City agrees to provide to the Tribe and CEDCO, for use in connection with its trust property, the following municipal services.

(a) Sewer Services: The City will provide to The Mill property sanitary and storm sewer services under the provisions of State and Federal regulations of those services and the provisions of its sewer connection and sewer user ordinances; and the provision of such services is subject to, and conditioned on, compliance with those laws, rules and regulations.

(b) Fire Protection: The City agrees to furnish fire protection services to The Mill premises subject to the City's rules and policies for providing protection to premises within the City of North Bend and premises for which the City provides contract fire protection. The quality and type of fire protection to be provided will depend, in part, on compliance at the site with appropriate fire protection standards for construction, layout and operation of The Mill facility.

(c) Law Enforcement: City law enforcement officials are involved with the enforcement of both State and local laws which will be impacted by the number of persons traveling to or using The Mill facilities; but CEDCO will provide its own policing of the use of its facilities at The Mill.

(d) Community and Tourist Promotion: The City provides funds and personnel to promote tourism and other use of the various facilities and attractions in the City and Bay Area from funds derived from a transient room tax. The City agrees to continue such services with funds provided under the provisions of this agreement, and such funds will be expended as provided in this agreement and in Ordinance No. 1650 as it now exists or may hereafter be amended.

(e) Other Impacts on Municipal Services: The parties agree to cooperate in identifying other specific needs for municipal facilities and services within the City attributable to the construction, operation or maintenance of The Mill; and, based on the type and nature of the impacts, the parties will attempt to mitigate such impacts, and in case of disagreement will submit the issue to arbitration.

(5) CONSIDERATION FOR SERVICES: As consideration for the general municipal services provided by the City of North Bend together with the specific services described herein, the Tribe and CEDCO will be obligated for payment to the City for such services as follows:

(a) Payment in Lieu of Taxes: For general municipal services, including fire protection and law enforcement, the Tribe and CEDCO agree to pay to the City an amount in lieu of taxes equal to the property tax assessment rate of the City for each fiscal year

beginning July 1 applied to the value of non-taxable real and personal property on the premises of The Mill property. Payment shall be made in July of each fiscal year.

For purposes of this agreement, the initial value of property shall be not less than the total acquisition cost of land, improvements and personal property. Thereafter, valuation of land, improvements and personal property will be not less than the latest valuation established by the Coos County Assessor. If valuation of any property ceases to be established by the Assessor, then the valuation of that property shall not be less than the full insurable value thereof. Notwithstanding any other provisions on valuation of property, either party may require a new valuation by a qualified appraiser. If the parties cannot agree on one appraiser, each shall select an appraiser and those two appraisers shall select a third and the three or a majority of them shall make the determination of value. Costs of appraisals shall be paid by the party demanding the appraisal, except that the cost of an appraiser selected by one party only will be paid by that party.

In the event that changes in the Oregon laws substitute another tax for property taxes, the in-lieu of tax rate for purposes of this agreement shall be the latest rate per \$1,000 of value assessed by the City.

As an illustration of the computation of the amount of in lieu of taxes, if the tax rate of the City were \$5.6826 per \$1,000 of value (as it was for 1993-94) and if the value were \$16,000,000, then the in lieu payment would be \$90,921.60.

(b) Sewer Charges: CEDCO and/or the Tribe agree to pay to the City all connection and user charges for sanitary and storm sewer services for The Mill that are charged to properties outside the City under present, amended and future ordinances.

(c) Local Improvement Districts: In the event that The Mill will be directly within the area benefiting from a street, sewer, drainage or other public improvement, then it will be treated the same as other property within the City, and will have the right to file a remonstrance to the improvement and will be subject to payment of assessments for benefits to the property.

(d) Room Charges: CEDCO and the Tribe agree that the City will be paid at the same rate for occupied rooms at any motel or hotel operated at The Mill as are charged to other motels and hotels within the City under present and future ordinance provisions. Such charges will be paid monthly during the next succeeding month after they are incurred in the following manner:

(i) The first \$150,000 will be paid to the City to be expended as provided in Section 27 of North Bend Ordinance No. 1650. Each year such amount will be increased or decreased by

the percentage of increase or decrease in the U.S. City Average Consumer Price Index for All Urban Consumers during the preceding calendar year.

(ii) Amounts in excess of \$150,000 shall be paid into a fund established jointly by the City and CEDCO to promote the Mill, the Bay Area and the City of North Bend. These funds will be used and controlled by mutual agreement between CEDCO and the City of North Bend.

(e) Accrual and Payment of Consideration: Payments in lieu of taxes will accrue beginning with the date that The Mill property is acquired by the Tribe; provided, that payment for the fiscal year during which the transfer is made will be in the amount of \$15,000 payable within one month of the transfer, and \$85,000 will be payable within one month from the opening or use of any part of The Mill property for gaming. Sewer charges will accrue and be paid as provided in the Ordinances of the City.

(6) DISPUTE RESOLUTION: In the event that an issue set forth in this agreement is not resolved by the parties pursuant to the procedures set forth herein, such an issue shall be resolved by arbitration and/or judicial proceedings in accordance with the State of Oregon Dispute Resolution process.

(a) Notice: The party asserting any breach or failure to perform this agreement shall give the other party written notice specifying the alleged breach or failure, and the other party or parties will have thirty days in which to remedy the breach or provide a written statement asserting reasons why no breach has occurred. If the matter has not been resolved through such process, then either party may institute proceedings for dispute resolution.

(b) Addresses for Notifications: Unless changed by written notice to the other parties, the addresses for mailing notices will be as follows:

Coquille Tribe of Oregon  
P.O. Box 1435  
Coos Bay, Oregon 97420

Coquille Economic Development Corp.  
3201 Tremont  
North Bend, Oregon 97459

City of North Bend  
P.O. Box "B"  
North Bend, Oregon 97459

(c) Court Costs and Attorney's Fees: In the event of legal proceedings to enforce any provision in this contract, the prevailing party shall be entitled to an award of court costs and reasonable

attorney's fees in such legal proceedings and any appeal thereof.


(7) ENTIRE AGREEMENT: This agreement constitutes the entire agreement between the parties and is intended to be consistent with applicable law, and the parties agree that there exists no other understandings or agreements, either expressed or implied, concerning the subject matter of this agreement.


(8) FEE TO TRUST APPEAL AND VACATION: Immediately following the execution of this agreement, the City of North Bend agrees to drop its appeal of the Warehouse Properties transfer from fee status to trust status by the United States through the Department of Interior, and agrees to use its best efforts to complete the vacation of Wharf within said property. The City of North Bend will at the same time as the execution of this agreement formally notify the Interior Board of Indian Appeals that it is withdrawing its appeal of the Area Director's decision to accept The Mill site into trust for the benefit of the Tribe. The City also agrees not to oppose the allowance of gaming or a lease on the premises.


(9) AMENDMENTS: This agreement may be amended in writing by the parties by (1) identifying it as an amendment; (2) attaching it to this agreement; and (3) executing such amendments.

(10) APPROVAL BY DEPARTMENT OF INTERIOR: This agreement will not be effective unless and until it has been approved by the Department of Interior through the written endorsement on this agreement by its authorized representative.

Executed for the City this 25<sup>th</sup> day of October, 1994; executed for the Tribe this 25<sup>th</sup> day of October, 1994; and executed for CEDCO this 25<sup>th</sup> day of October, 1994.

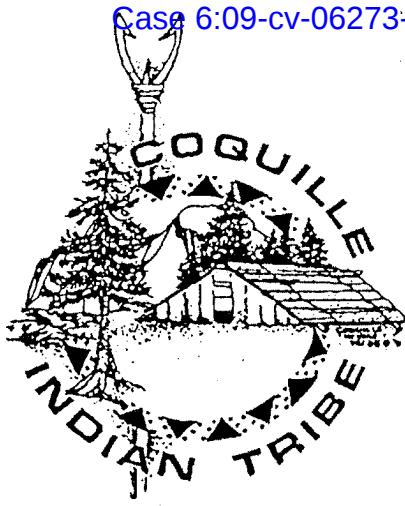
  
MAYOR OF CITY OF NORTH BEND

  
BRUCE ANDERSON  
President of CEDCO

  
EDWARD METCALF  
Chairman of the Coquille  
Indian Tribe

The foregoing Agreement for Municipal Services is hereby approved by authority delegated to the Superintendent, Portland Area Office, Bureau of Indian Affairs, United States Department of Interior, this 27<sup>th</sup> day of October, 1994.

  
UNITED STATES DEPARTMENT OF INTERIOR



# COQUILLE INDIAN TRIBE

295 S. 10th • P.O. Box 1435 • Coos Bay, OR 97420  
Telephone 503-267-4587 • FAX 503-269-2573  
1-800-622-5869

## RESOLUTION CY9454

**ECONOMIC DEVELOPMENT:** Approval of Agreement for Municipal Services  
with the City of North Bend

**WHEREAS,** the Coquille Indian Tribe is governed by the Coquille Tribal Council pursuant to the Tribal Constitution adopted by eligible voters of the Tribe on August 27, 1991, and approved by the Secretary of the Interior on September 9, 1991; and that the Tribal Council is empowered to act for the Coquille Indian Tribe; AND,

**WHEREAS,** the Coquille Indian Tribe in the exercise of its governmental powers through its duly elected Tribal Council did establish the Coquille Economic Development Corporation (CEDCO) to conduct and perform economic development and related work for and on behalf of the Coquille Indian Tribe; AND,

**WHEREAS,** the Tribe and CEDCO intend to construct, operate, and maintain a facility on and in connection with the Tribe's property to be called "The Mill"; AND,

**WHEREAS,** there is a need for municipal services for the facility and operations including sewer, water, fire protection, security, power, and other impacts as may be determined; AND,

**WHEREAS,** the City of North Bend, the Coquille Indian Tribe, and the Coquille Economic Development Corporation did enter into an Agreement For Municipal Services in which the Tribe agrees to a limited waiver of its sovereign immunity for the enforcement of the terms of the agreement and in which the City agrees to provide certain services; AND,



**RESOLUTION CY9454**

**ECONOMIC DEVELOPMENT:** Approval of Agreement for  
Municipal Services with the City of North Bend


Page 2

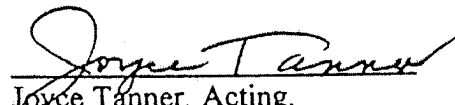
**WHEREAS,** CEDCO advises and recommends to the Coquille Tribal Council that the Agreement for Municipal Services is in the best interest of the Tribe and will provide economic benefits; NOW,

**THEREFORE BE IT RESOLVED,** by the Tribal Council of the Coquille Indian Tribe that the Agreement for Municipal Services and the limited waiver of sovereign immunity contained in said Agreement executed by and on behalf of the City of North Bend by its Mayor as authorized by its City Council, executed by and on behalf of the Coquille Indian Tribe by the Chairman of the Tribal Council, and executed by and on behalf of the Coquille Economic Development Corporation by its President in October 1994 is hereby ratified.

**CERTIFICATION**

The foregoing Resolution was duly adopted at the Tribal Council Meeting held at Coos Bay, Oregon, on November 7, 1994, with the required quorum present by a vote of 3 For; 0 Against; 3 Absent; 0 Abstaining.

  
Edward L. Metcalf,  
Chairperson

  
Joyce Tanner, Acting,  
Secretary-treasurer

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF COOS

THE CITY OF NORTH BEND, an Oregon )  
Municipal Corporation, )

Case No.: 09CV0783

Plaintiff, )

ACCEPTANCE OF SERVICE OF )

vs. )

COMPLAINT ON BEHALF OF )

COQUILLE INDICAN TRIBE OF )  
OREGON and COQUILLE ECONOMIC )  
DEVELOPMENT CORPORATION, )

COQUILLE INDIAN TRIBE OF OREGON )  
AND COQUILLE ECONOMIC )  
DEVELOPMENT CORPORATION. )

Defendants. )

STATE OF OREGON )

) ss.

County of Coos )

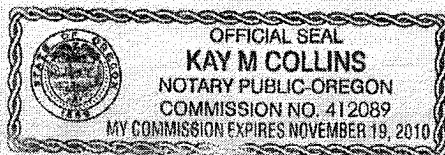
I, Melissa Cribbins, being first duly sworn, depose and say as follows:

I am one of the attorney for the Coquille Indian Tribe of Oregon and the Coquille Economic Development Corporation, Defendants, in the above-entitled matter. I am authorized to and do hereby accept service of the Complaint on behalf of the Coquille Indian Tribe of Oregon and the Coquille Economic Development Corporation by accepting a true copy of said Complaint, certified as such by Mike Stebbins, Attorney at Law. I accepted the Complaint at my offices in North Bend, Oregon, on the 28<sup>th</sup> day of September, 2009.

*3 with Kenny*  
MELISSA CRIBBINS, OSB No. 066419  
Coquille Indian Tribe  
3050 Tremont Ave.  
North Bend, OR 97459

92352

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of September, 2009.



*Kay M Collins*  
NOTARY PUBLIC FOR OREGON

Acceptance of Service - 1

Stebbins & Coffey  
Attorneys at Law  
P.O. Box 1006  
745 California St.  
North Bend, OR 97459  
(541) 756-2066

Certified true copy:

By 

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF COOS

THE CITY OF NORTH BEND, an Oregon  
Municipal Corporation,

Plaintiff,

vs.

COQUILLE INDIAN TRIBE OF OREGON  
and COQUILLE ECONOMIC  
DEVELOPMENT CORPORATION,

Defendants.

Case No.: 09CV0783

MOTION FOR PRELIMINARY  
INJUNCTION

Oral Argument Requested (30 minutes)

Official Court Reporting Services  
Requested

Expedited Hearing Requested

1.

Plaintiff moves the Court for an order granting a preliminary injunction restraining Defendants from withholding from Plaintiff a portion of the payments for municipal services due for the fiscal year beginning July 1, 2009. Specifically, Plaintiff seeks an order restraining Defendants from continuing to withhold \$140,993, of the approximate \$639,000 due to the City for the current fiscal year, on the grounds that the Plaintiff has provided, and the Defendants have received, general municipal services, including fire protection and law enforcement services, since July 1, 2009, and Plaintiff will be immediately and irrevocably harmed by the continued withholding of this partial amount during the pendency of this action.

///

///

**MOTION - Preliminary Injunction - 1**



2.

In addition, Plaintiff moves the Court for an order granting a preliminary injunction restraining Defendants from receiving from Plaintiff, and relieving Plaintiff from any obligation or duty to provide, any further municipal services as described in paragraph 4 of the Agreement, during the pendency of this action.

3.

Defendants' continued withholding of the partial payment of \$140,993 described in paragraph 1 will cause immediate and irreparable injury to the Plaintiff in the form of cuts in the Plaintiff's general service budget, that will result in the elimination of one police officer position, as well as the termination of one firefighter employee and one parks worker employee, effective November 1, 2009.

4.

Plaintiff requests that the Court waive the giving of security pursuant to ORCP 82 A(1)(b)(ii), on the grounds that the preliminary injunctions are sought by the Plaintiff to prevent the Defendants' unlawful conduct and to restrict the Defendants to available judicial remedies.

5.

In support of this motion, Plaintiff relies on the affidavit of Jan Willis, ORCP 79, and the following memorandum.

6.

#### MEMORANDUM OF POINTS AND AUTHORITIES

ORCP 79 A(1), provides that a preliminary injunction may be allowed "when it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during litigation would produce injury on the party

1 seeking relief." Under the traditional test, recognized by the Ninth Circuit Court of  
2 Appeals, a preliminary injunction is appropriate when:

- 3 1. The moving party will suffer irreparable injury if the injunction is not granted,
- 4 2. The moving party will probably prevail on the merits,
- 5 3. In balancing equities, the adverse party will not be harmed more than the moving  
6 party will be helped, and
- 7 4. Granting the injunction is in the public interest.

8 *National Wildlife Federation v. Colston*, 773 F.2d 1513, 1517 (9<sup>th</sup> Cir. 1985)

9 Each of the elements of this test is satisfied in the present case, as follows:

10  
11 The City will suffer irreparable injury if the injunction is not granted.

12 In the present litigation, the Plaintiff seeks specific performance from the  
13 Defendants, which would require the Defendants to continue making payments to the  
14 Plaintiff in exchange for municipal services and other value consideration provided by  
15 the Plaintiff. The first preliminary injunction order sought by Plaintiff, is for payments in  
16 lieu of taxes for services that have already been provided by the Plaintiff, and received  
17 by Defendants. Plaintiff has provided these services to the detriment of other citizens  
18 who have paid for such services through their property taxes and other municipal fees.  
19 In addition, the partial payment requested is needed to avoid the elimination of three  
20 positions in the City's police, fire and parks departments. Reductions in staffing for  
21 police and/or fire services impose a risk that adequate personnel will not be available to  
22 promptly respond to emergency situations, which increases the risk of property damage,  
23 serious injury, and death in such situations. Further, once a position is eliminated, the  
24 employee filling that position is lost and usually does not return. If the position is later  
25 reinstated, the previously lost experienced employee will be replaced by a less  
26 experienced employee.

***MOTION – Preliminary Injunction - 3***

1 In addition, if the Plaintiff is not relieved from the obligation of providing future  
2 services during the pendency of this action, the Plaintiff will be required to divert  
3 resources from its citizens who pay for municipal services through their taxes, to provide  
4 such services to the Defendants without compensation.

5  
6 The City will likely prevail on the merits.

7 The Plaintiff seeks specific performance by the Defendants on a contract that  
8 was implemented in 1994, and has been faithfully honored by the parties for the past 15  
9 years. To the extent that the Plaintiff seeks payment for services already rendered to,  
10 and enjoyed by, the Defendants, the Plaintiff is very likely to prevail, if for no other  
11 reason than on the basis of equity. In addition, to the extent that the Defendants fail  
12 and/or refuse to pay for municipal services from the Plaintiff during the pendency of this  
13 litigation, then the Plaintiff is likely to be relieved from any obligation to provide such  
14 services. In the alternative, if the Court finds that the Defendants are likely to prevail  
15 and be relieved from any further obligation to pay for future services under the  
16 Agreement, then as a consequence of this decision, the Defendants will have no right to  
17 receive such services from the Plaintiff, and the Plaintiff will be relieved from the  
18 obligation and duty to provide such services to the Defendant.

19  
20 In balancing equities, the Tribe will not be harmed more than the City will be helped.

21 The preliminary injunction requests that the Court order the Defendants to stop  
22 withholding approximately 22% of the payments in lieu of taxes that would be due to the  
23 Plaintiff under the terms of the Agreement for the fiscal year that began July 1, 2009.  
24 Since that time, the Plaintiff has provided, and the Defendants have received, municipal  
25 services that the Plaintiff has no obligation to provide, but for the Agreement. By  
26 requiring the Defendants to release a payment of \$140,993, the Plaintiff will be able to

**MOTION – Preliminary Injunction - 4**

1 preserve three employee positions that will otherwise need to be eliminated. In  
2 addition, by relieving the City of the obligation to provide additional municipal services  
3 without compensation during the pendency of the litigation, the parties' relationship will  
4 be placed on hold while the existence and validity of the Agreement is considered by  
5 the Courts. This is an equitable arrangement to maintain while the parties argue their  
6 respective positions concerning the Agreement to the Court.

7  
8 Granting the injunction is in the public interest.

9 The Plaintiff is a municipal corporation that provides municipal services, including  
10 police and fire services, to all persons within its corporate limits. The Defendants' real  
11 property is surrounded by the Plaintiff on all sides, and is largely open to the general  
12 public. Persons entering the Defendants' property, must pass through the Plaintiff's  
13 jurisdiction. As a result, Plaintiff is uniquely situated to provide municipal services to the  
14 Defendants and members of the general public that travel to, from and stay upon the  
15 Defendants' property.

16 If the injunction is denied, and the Plaintiff is required to have provided, and to  
17 continue to provide, municipal services to the Defendants without compensation, then  
18 the Plaintiff will be required to implement severe cuts to its general services budget.  
19 Such cuts will eliminate positions in the Plaintiff's police, fire and parks departments,  
20 among others. As a result, the Plaintiff's ability to provide such services to the  
21 Defendants and the general public will be reduced. However, if the injunction is  
22 granted, the Plaintiff will be able to maintain its current staffing levels and levels of  
23 service to the general public until the litigation is resolved. In addition, for the duration  
24 of the litigation, the Plaintiff will be relieved from stretching its resources to provide  
25 continuing municipal services to the Defendants, for which the Plaintiff is receiving no  
26 compensation.

The Court should waive the giving of security.

Plaintiff requests that the Court waive the giving of security pursuant to ORCP 82 A(1)(b)(ii), on the grounds that the preliminary injunctions are sought by the Plaintiff to prevent the Defendants' unlawful conduct and to restrict the Defendants to available judicial remedies. The general rule set forth in ORCP 82, is that no "preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is found to be wrongfully enjoined or restrained." However, an exception to the requirement of giving security exists when the "restraining order is sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined party to available judicial remedies."

In the underlying action, the Plaintiff seeks specific performance by the Defendants with respect to an Agreement for Municipal Services between the parties. The Agreement provides, among other things, that the Plaintiff will provide certain municipal services to the Defendants' Mill Casino and Hotel property (which is currently exempt from taxation by the Plaintiff), in exchange for certain payments in lieu of taxes. However, since July of 2009, and while the Defendants have continued to actively utilize the Plaintiff's municipal services, the Defendants have withheld and failed to pay the Plaintiff for these services as provided for in the Agreement. To the extent that the Defendants may have some counterclaim or other grievance against the Plaintiff related to the Agreement, the Defendants must be restricted to the available judicial remedies set forth in the Agreement. The withholding of payments by the Defendants is not

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**MOTION – Preliminary Injunction – 6**

1 pursuant to any right or dispute resolution procedure set forth in the Agreement and is  
2 therefore unlawful. For these reasons, the Court should waive the giving of security by  
3 Plaintiff.

4  
5 Dated this 28 day of September, 2009.

6  
7 Respectfully submitted,

8  
9 STEBBINS & COFFEY

10  
11 

12 MIKE STEBBINS  
13 OSB No. 75353 - Trial Attorney  
14 Stebbins and Coffey  
15 745 California - P. O. Box 1006  
16 North Bend OR 97459  
17 Phone: (541) 756-2066 - Fax: (541) 756-2060  
18 Email: stebbins@stebbinsandcoffey.com

19  
20  
21  
22  
23  
24  
25  
26  
**MOTION – Preliminary Injunction - 7**

**CERTIFICATE OF FILING**

I certify that on September 28, 2009, the original of this Motion for Preliminary Injunction was hand delivered to the Coos County Circuit Court Clerk for filing, at this address:

Courthouse  
250 N. Baxter  
Coquille, OR 97423

DATED this 28<sup>th</sup> day of September, 2009.



MIKE STEBBINS  
OSB No. 75353 - Trial Attorney


***MOTION – Preliminary Injunction - 8***

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing Motion for Preliminary Injunction; Affidavit of Jan Willis, upon the following individual by depositing, in the United States Post Office at North Bend, Oregon, on the 30<sup>th</sup> day of September, 2009, in a sealed envelope with postage prepaid, addressed to the following individual at the address shown below:

Edmund Clay Goodman  
Hobbs Straus Dean & Walker LLP  
806 SW Broadway, Suite 900  
Portland, OR 97205

STEBBINS & COFFEY

By:   
DAVID R. KOCH, OSB 004630  
Trial Attorney for Plaintiff  
P. O. Box 1006  
North Bend OR 97459  
541.756.2066 -- Telephone  
541.756.2060 -- Facsimile  
Email: [dkoch@stebbinsandcoffey.com](mailto:dkoch@stebbinsandcoffey.com)

***MOTION – Preliminary Injunction - 9***



IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF COOS

THE CITY OF NORTH BEND, an Oregon  
Municipal Corporation,

Plaintiff,

vs.

COQUILLE INDIAN TRIBE OF OREGON  
and COQUILLE ECONOMIC  
DEVELOPMENT CORPORATION,

Defendants.

Case No.: 09CV0783

AFFIDAVIT OF JAN WILLIS  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION

STATE OF OREGON )  
 ) ss  
COUNTY OF COOS )

I, Jan Willis, being first duly sworn, say:

1. I am the City Administrator for the City of North Bend ("City").
2. In my role as City Administrator, I oversee and am responsible for the development and implementation of the City's budget.
3. The City has been engaged in discussions and negotiations with the Coquille Indian Tribe and its Coquille Economic Development Corporation (collectively, the "Defendants"), for more than one year regarding the Defendants' desire to modify the terms of an Agreement for Municipal Services that was entered into between the parties in 1994 ("Agreement").

*Affidavit of Jan Willis - 1*

Stebbins & Coffey  
Attorneys at Law  
P.O. Box 1006  
745 California St.  
North Bend, OR 97459  
(541) 756-2068

- 1 4. During the course of these discussions, the Defendants have, at times, withheld  
2 payments due to the City under the Agreement. The City has been informed by  
3 one or more agents of the Defendants that the Defendants' purpose of  
4 withholding payments to the City was to convince the City to accept the  
5 Defendants' terms for a new Agreement.
- 6 5. In turn, the City has informed the Defendants that the withholding of payments is  
7 not allowed under the Agreement, and that the Defendants' failure to make  
8 payments when due will result in severe economic hardship to the City, including  
9 the forced layoff of some City employees.
- 10 6. The terms of the Agreement require that the Tribe make one annual payment in  
11 lieu of property taxes in July of each year. The City has traditionally allowed the  
12 Tribe to make four equal quarterly payments, without penalty or interest, rather  
13 than requiring a single annual payment. This accommodation has been made at  
14 the discretion of the Plaintiff, and has not been incorporated as a written  
15 amendment to the Agreement.
- 16 7. Under the quarterly payment system, the Defendants were required to make a  
17 quarterly payment in lieu of property taxes in July 2009, in the approximate  
18 amount of \$115,000. The Defendants have failed and/or refused to make this  
19 payment.
- 20 8. In addition, the Defendants are required to make an additional quarterly payment  
21 of \$115,000, as well as a payment in lieu of the transient occupancy tax in the  
22 approximate amount of \$45,000, in October 2009. The Defendants have  
23 informed the Plaintiff in writing that they will not make any payments due under  
24 the Agreement for the fiscal year beginning July 1, 2009, until the City has  
25 agreed to amend the Agreement.
- 26

1 9. Since July 1, 2009, the Defendants have continued to demand and receive  
2 municipal services from the Plaintiff, including police and fire services.

3 10. If the Defendants fail to make any payments due under the Agreement, the City  
4 will not receive approximately \$639,000 in budgeted revenue for the current fiscal  
5 year.

6 11. In anticipation of the Defendants' continued breach of the Agreement, the City  
7 must make reductions in its budgeted expenditures for the remainder of the fiscal  
8 year to make up the revenue shortfall.

9 12. The City has a revised budget for its current fiscal year that includes the  
10 elimination of one police officer position, one firefighter position, and one parks  
11 department employee, for an anticipated savings of \$140,993. The police  
12 position is currently vacant and will not be filled. The firefighter and parks  
13 positions are currently filled, and the employees in those positions will be  
14 terminated effective November 1, 2009.

15 13. It is my belief as a City Administrator that reductions in staffing for police and/or  
16 fire services impose a risk that adequate personnel will not be available to  
17 promptly respond to emergency situations, which increases the risk of property  
18 damage, serious injury, and death in such situations.

19 14. It has further been my experience that once a position is eliminated, the  
20 employee filling that position is lost and does not return even if the position is

21 . ///

22 ///

23 ///

24 ///

25 ///

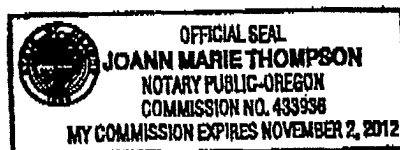
1 later reinstated, which causes the City to lose the training and experience invested in  
2 that individual.

3  
4 DATED this 25 day of September, 2009.

5  
6   
7 Jan Willis

8  
9 SWORN AND SUBSCRIBED before me this 25 day of September, 2009, by  
10 Jan Willis.

11 Joann Marie Thompson  
12 NOTARY PUBLIC FOR OREGON  
13 My Commission Expires: Nov. 2, 2012



Affidavit of Jan Willis - 4